LIBRARY
SUPREME COURT, U.S.

Office - Supreme Court, U.S.
FILED
AUG 29 1957
JOHN T. FEY, Clerk

IN THE

Supreme Court of the United States

October Term, 1957

No. 411

HELENE MARCEAU SIDEBOTHAM,

Petitioner,

vs.

W. A. ROBISON, Administrator of Estate of Robert Sidebotham, deceased, ROBERT SIDEBOTHAM and JAMES SIDEBOTHAM,

Respondents.

Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

MANUEL RUIZ, JR.,
704 South Spring Street,
Los Angeles 14, California,
Attorney for Petitioner.

SUBJECT INDEX

PAGE

Opinions below 1

Jurisdiction 2

Question presented 2

The statutes involved 2

Statement 3

Reasons for granting the writ 4

A federal court may not vest jurisdiction in a state court which is denied said court by state law 6

When the limited subject matter of state probate court jurisdiction and controversy is the determination of heirship, the court below cannot under the guise of res judicata, expand the authority of said state court and by usurping powers reserved only to state courts of general jurisdiction determine property rights 9

The order and judgment of the state probate court 11

Conclusion 13

Appendices:

Appendix "A." Statutory provisions cited and quoted ..... App. p. 1

Appendix "B." Opinion below ..... App. p. 4

Appendix "C." Conflicting opinion:

Extract from memorandum opinion 19

Findings of fact and conclusions of law 20

Judgment 25

TABLE OF AUTHORITIES CITED

CASES — PAGE

Alexander v. Fid. Trust Co., 238 Fed. 938; rev., 243 Fed. 162.. 7
Bales v. Superior Court of Los Angeles County, 21 Cal. 2d 17, 129 P. 2d 685 10
Bartleson v. Feidler, 149 Fed. 30 7
Becket v. Selover, 7 Cal. 215 13
De Wolf v. De Wolf, 175 N. W. 884 9
Lane v. Superior Court in and for Siskiyou County, 98 Cal. App. 2d 165, 219 P. 2d 497 10
Logue v. Ferris, 280 Fed. 707 7
Sampsell v. Superior Court, 32 Cal. 2d 763 6
Schilling v. Schwitzer, 142 F. 2d 82 7
Sutton v. English, 246 U. S. 199 7
Van Deusen's Estate, In re, 30 Cal. 2d 285 ..... 7, 10

RULES

Rules of the United States Supreme Court, Rule 19(b) 2

STATUTES

California Probate Code, Chap. IV, Sec. 108 ..... 2, 9
California Probate Code, Chap. XVI, Sec. 1000 2
California Probate Code, Chap. XVII, Sec. 1080 ..... 2, 6, 7, 9
California Probate Code, Sec. 1008 3
United States Code, Title 28, Sec. 1441 2
United States Constitution, Fifth Amendment 2, 13

IN THE

Supreme Court of the United States

October Term, 1957

No. .....

HELENE MARCEAU SIDEBOTHAM,

Petitioner,

vs.

W. A. ROBISON, Administrator of Estate of Robert Sidebotham, deceased, ROBERT SIDEBOTHAM and JAMES SIDEBOTHAM,

Respondents.

Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

Helene Marceau Sidebotham petitions for certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit, entered in the above case on April 2, 1957.

Citations to Opinions Below.

The official opinion of the Court below, Ninth Circuit Court of Appeals, is printed in the Appendix "B". The opinion on a prior appeal in a companion case involving the pleadings is reported in 216 F. 2d 816. This, however, is an historical antecedent and not essential for a determination of the case at bar.

Jurisdiction.

This case was removed to the Federal Court because of diversity of citizenship. (28 U. S. C., Sec. 1441.)

The date and time of entry of the Judgment sought to be reviewed is April 2, 1957. The order which denied appellant's petition for rehearing is dated July 25, 1957. This Court has jurisdiction to review the judgment under Rule 19(b).

Question Presented.

The question presented for review is whether a Federal Court, under the guise of *res judicata,* can give to a State Court of limited jurisdiction attributes of power which are withheld and denied said Court by State law, in violation and in irreconcilable conflict with the highest State Court ruling thereon, and whether in addition to constituting plain error, as a matter of law, in so doing it is likewise a departure from the accepted and usual course of judicial proceedings.

The Statutes Involved.

1. California Probate Code, Chapter XVII, entitled "Determination of Heirship," Section 1080.

2. California Probate Code, Chapter IV, entitled "Kindred not mentioned in will, who share in Estate," Section 108.

3. California Probate Code, Chapter XVI, entitled "Distribution and Discharge," Section 1000.

4. Fifth Amendment to United States Constitution.

Statement.

Petitioner originally filed a petition before the California State Probate Court under Section 1008 of the State Probate Code, to "determine heirship." *She alleged that she was not the widow of the decedent.* Thereafter she ascertained that the jurisdiction of said Court was limited in its authority and power to *a declaration of status* either as an heir to decedent, or a person in privity entitled to receive by distribution, whereupon she desisted from further pursuing her petition, and instead filed her claim under another theory and action in the California State Superior Court, of general jurisdiction, as a tenant in common and a stranger to decedent, and not as at first, in privity with his estate. Petitioner after trial on the merits in the United States District Court, successfully won valuable property rights held in co-tenancy against the estate of her former husband, on her claim that she was not his widow but a stranger to him, in that he *had died after she had first divorced him some years before.* [Tr. pp. 33-49, Opinion, Findings and Judgment, U. S. Dist. Ct.]

The Court below reversed the judgment of the United States District Court by giving the State Probate Court attributes of power prohibited by State Law. The Court below by use of the formula of *res judicata* has attempted to do indirectly that which it cannot do either under the Constitution of the United States or the laws of the State of California based on its opinion that at the time Petitioner filed her original claim of interest before the California State Probate Court, despite her allegations and the proof adduced that there was nevertheless no privity of status, that her property rights were determined adversely to her by the order of said Probate Court.

The power, authority and jurisdiction of the State Probate Court was clearly limited to a determination of whether Petitioner was in "privity" with the estate of decedent, *all of which subsidiary questions of property it could determine only upon an allegation or finding of the existence of privity or status.*

Petitioner, in her allegations of claim before said Probate Court, affirmatively stated that *she was not the widow of the decedent. That she had divorced him prior to his death. That decedent had died intestate. She therefore precluded the said Court from assuming jurisdiction of the subject matter as provided by State Law since she excluded herself from privity with said estate, in her petition.* She was not present in court as she had abandoned her claim which was barren of any jural relationship with the estate of decedent.

Reasons for Granting the Writ.

The Ninth Circuit Court of Appeals has rendered a decision in conflict with the applicable State Law, and departed from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision, as follows:

> A federal court is precluded, in invoking *res judicata,* from reading into a state judgment, attributes of authority and jurisdiction in the State Probate Court which rendered it, which are denied to it by State Law. When State Law determines property rights, predicated upon "status," an allegation or finding of status is necessary to give it jurisdiction to render a judgment, otherwise the same is void, and *res judicata* cannot be invoked. To furnish a remedy where none existed and thereby render an unauthorized judgment is not within its Appellate Court jurisdiction and is irregular.

Thus, a decree of divorce and subsidiary property rights dependent on the same, must be predicated upon an allegation and finding of the status of "marriage." A judgment for failure to provide, and subsidiary property rights dependent on the same, must be predicated upon an allegation or finding of the status of "parent and child." A judgment for breach of contract and subsidiary property rights dependent upon the same, must be predicated upon an allegation or finding that a contract express or implied which creates the legal status of the parties, was entered into. An indispensable jural relationship is of necessity the foundation of all legal rights and limits of authority and power in the Courts, not the "prayer" of a claimant before a Court of limited jurisdiction.

In the case at bar the Court below invoked *res judicata* by holding that Petitioner's property rights had already been determined by a Probate Court which Probate Court had no jurisdiction to determine and wherein Petitioner neither alleged the jural relation of "privity" with the estate of decedent, nor did the State Court make a finding of such jural relation or privity with the estate, which had to exist as a basis to exercise jurisdiction. The decision rendered by the United States District Court in the case at bar (Appendix "C", pp. 19-26) and a prior appeal concerning the pleadings in the case at bar (216 F. 2d 816), from whence the Petitioner derives her property rights, is predicated upon the fact that Petitioner was a stranger with the Respondent's estate. *The jural relationship, the status in both action, i.e., the action before the Probate Court, and the action in the case at bar, were distinct, different, and irreconcilable and the Federal Court below cannot depart from the accepted and usual course of judicial proceedings and ex mero motu set itself in motion thereby to breath life and power into a*

State Court which is denied by State law, and independently thereof nevertheless redetermine a case on its merits, in excess of its own jurisdiction under the guise of res judicata.

A Federal Court May Not Vest Jurisdiction in a State Court Which Is Denied Said Court by State Law.

Where the law withholds jurisdiction, no power rests to confer it.

It was obvious to Petitioner that if she had originally proceeded in the Probate Division of the Superior Court, on her first petition "claiming adversely to the estate," that said Probate Court would have promptly dismissed the case as to her because she asserted in her petition that she was *not the widow of the decedent* and therefore barred from any relief under section 1080 which she had invoked. (Appendix B, opinion of Court below sets forth allegations of Petition.) It was obvious to Petitioner that she could not confer jurisdiction on the Probate Court, if it lacked jurisdiction (*Sampsell v. Superior Court*, 32 Cal. 2d 763, 766) to adjudge her status as a widow. She was not entitled to be heard on the merits, so she abandoned her abortive petition in the Probate Court as she had misconceived her rights and sued for relief to which she was not entitled. She pursued the same no further, and elected to proceed with the case at bar instead, upon a different theory of relief.

The jurisdiction of the Probate Court on her original petition was limited to the establishment of a status, *the status of an heir to decedent, or a person entitled to receive by distribution.* By her own allegations in said petition to the effect that she was not the widow of the decedent, Petitioner had precluded said Probate Court from

assuming jurisdiction of the "subject matter" since Petitioner excluded herself in privity by the said allegations of her petition. (*In re Van Deusen's Estate*, 30 Cal. 2d 285, 291.) A Federal Court, even though diversity of citizenship exist, cannot expand that which falls within original State Probate Court disposition. (*Sutton v. English*, 246 U. S. 199.) When a Probate Court in excess of its jurisdiction attempts to partition land, its decree cannot operate as *res judicata*. (*Logue v. Ferris*, 280 Fed. 707.)

A Probate Court does not adjudicate titles adverse to the decedent. (*Alexander v. Fid. Trust Co.*, 238 Fed. 938, reversed on other grounds in 243 Fed. 162; see *Bartleson v. Feidler*, 149 Fed. 30.)

An allegation of privity to and with the estate of the decedent was of the very essence of the subject matter which was indispensable to have given the State Probate Court jurisdiction of the subject matter, under California Probate Code, Section 1080.

Petitioner has no quarrel with the authorities noted by the Court below of and concerning *res adjudicata*, and Petitioner is in agreement with the correct statement of the law by Justice Fields, that a person is bound as "to every admissible matter which might have been presented" and upon "all matters involved in the issue which might have been litigated and decided in the case." Petitioner, as a stranger not in privity with the decedent, could not have offered evidence, nor would any offer have been admitted by the State Probate Court, to recognize her as a claimant entitled to distribution. Only a trial court of general jurisdiction upon a basis of lack of privity could exercise jurisdiction. It is not the function of an Appellate Court to assume powers of a trial court. (*Schilling v. Schwitzer*, 142 F. 2d 82.)

When Petitioner framed the issues on her misconceived petition before the Probate Court and affirmatively alleged that the decedent had died five years after her divorce from him which divorce was by a court of "competent jurisdiction," she simply failed to state a cause of action upon her petition for heirship and claim of interest. The California Probate Court had neither the power nor authority to render any judgment upon the merits wherein she alleged that she was a stranger because a cause of action had not been stated and its sole remaining function was to dismiss or deny her petition. *Nor can the Federal Court below vest jurisdiction in a State Court which is denied said Court by State Law.* Petitioner's claim before the State Probate Court, which she abandoned before trial could have been dismissed by mandate, or even by demurrer. Since Petitioner alleged that she was not the decedent's widow, no evidence was admissible to prove the contrary. Since she alleged she was not the decedent's widow, there were no issues available to her upon which she could litigate any claim to heirship or distribution. The fact that she claimed that certain community property had accumulated under a "former marriage" to the decedent, would not have authorized the Probate Court, or given power to the Court, to decide that she was entitled to the same, as decedent's heir, or as decedent's widow, since such a judgment would have been void, and a nullity, and therefore not *res adjudicata.*

The State Probate Court had neither the power nor authority to render a favorable judgment upon Petitioner's claim, so the sole remaining function of said State Court was to dismiss or deny her claim. The denial of the claim made by the Petitioner was a declaration which disposed of the proceedings and had no further force. It

did not on its face, and in its omnibus dismissal or denial purport to adjudicate title to property not dependent upon "heirship."

Hence, a decree of distribution, while conclusive as to heirship, is not binding as to title adverse to the estate, over which it has no jurisdiction. (*De Wolf v. De Wolf*, 175 N. W. 884.)

When the Limited Subject Matter of State Probate Court Jurisdiction and Controversy Is the Determination of Heirship, the Court Below Cannot Under the Guise of Res Judicata, Expand the Authority of Said State Court and by Usurping Powers Reserved Only to State Courts of General Jurisdiction Determine Property Rights.

The United States District Court tried the case, on its merits. Extensive briefs on the merits were filed before the Court below. Four months after oral argument and submission, the Court below rendered its decision, without any reference whatsoever to the merits of the case as set forth in the transcript and the briefs, "because there must be an end to litigation."

California Probate Code, Chapter XVII, entitled "Determination of Heirship," Section 1080, reads as follows:

> ". . . the executor or administrator, or any person claiming to be an 'heir' of the defendant or 'entitled to distribution of his estate or any part thereof may file a petition setting forth his claim . . . and praying that the court determine who are entitled to distribution of the estate."

The definition of an "heir" according to Section 108 of the California Probate Code, is one "who would be entitled to succeed to the property . . . . according to the provisions of Division II of this Code."

Persons who are entitled to distribution, are described in California Probate Code, Chapter XVI, as heir devisees, legatees, or the assignee, grantee, or successor in interest of any heirs, devisee or legatee.

A divorced wife is not included within the provisions of Division II of the California Probate Code or within the description of a person entitled to distribution of a decedent's estate.

Under this section regulating procedure for determination of heirship, a petitioner is not entitled to be heard unless he claims to be an heir, and when such claim is made, the court acquires jurisdiction to determine heirship and also the interest of each respective claimant to the estate.

In re Van Deusen's Estate (1947), 30 Cal. 2d 285, 285, 291, 182 P. 2d 565.

Probate proceedings are purely statutory and special in their nature, so that the Superior court, although a "court of general jurisdiction," is circumscribed in heirship proceedings by this chapter conferring jurisdiction and may not competently proceed in a manner essentially different from that provided by this chapter.

Bales v. Superior Court of Los Angeles County (1942), 21 Cal. 2d 17, 24, 129 P. 2d 685.

Where a petition to establish heirship has been filed and the notice prescribed by this section and 1200 has been given, the probate court has jurisdiction to proceed with the whole matter of heirship in the decedent's estate. It is a decree not *"in persona"* in favor of one party against another but only declares the status of a *res* to-wit: privity with the estate.

Lane v. Superior Court in and for Siskiyou County (1950), 98 Cal. App. 2d 165, 167, 219 P. 2d 497.

The Order and Judgment of the State Probate Court.

The order and judgment of the State Probate Court is as follows:

> ". . . . Ordered, Adjudged and Decreed by the court that Robert Russell Sidebotham, alias, died intestate on the 21st day of December, 1951, leaving surviving as his only heirs at law and the only persons entitled to distribution of said estate Robert E. Sidebotham and James J. Sidebotham, the sons of said decedent; that thereupon the estate of said decedent descended to his said heirs at law and is now vested in them, subject to administration, share and share alike, and each of said persons is entitled to distribution of one-half of said estate when said estate shall be in a condition to be closed.
>
> "It Is Further Ordered, Adjudged and Decreed that the petition of Helene Marceau Sidebotham be and the same is hereby denied." (Appendix B, Extract from Opinion of Court below.)

Petitioner had theretofore filed an alleged "Claim of Interest" in the Estate of Robert Sidebotham, deceased, before the Probate Division of the State Superior Court in San Francisco, which rendered the above judgment and order, in the manner set forth in point 2, in the opinion of the Court below [Clk. Tr. p. 267]. Thereafter, Petitioner realized that by virtue of the "subject matter" involved she was in the wrong court so she thereupon, on October 10, 1952, 26 days before December 4, 1952, which was the date the Probate Court heard the above matter, filed another action upon a different theory and a different remedy and other pleadings before the same Superior Court, but not in probate, which pleadings were thereafter served upon Respondents prior to the probate hearing. Said second action is the case at bar on appeal, which was removed from the State Court, to the United States District Court for trial.

When on December 10, 1953, a Judge of the Superior Court signed a "decree establishing heirship" upon said petition of Petitioner, her petition in said Probate Court was obviously denied because she was not an "heir." Neither Petitioner nor her counsel were present in court at the time of the alleged hearing. No evidence was introduced. As pointed out in the opinion of the Court below [Tr. p. 268, *infra*], Petitioner appeared by "her petition" only, which was a "writing" which contained certain legal conclusions, and a prayer that it be determined that all of the property belonged to her by distribution as survivor. Said petition asserted that her marriage to the decedent had been "dissolved by a court of competent jurisdiction." It stated therein that the decedent had "died intestate during the month of December 1951," and further stated that Petitioner and the decedent were divorced on "November 14, 1946" which was five years before the decedent died. (Appendix B, contains extracts of Petition.)

The opinion or decision of said Probate Court appears in the opinion of the Court below.

Said opinion decided only one thing, to-wit: That the decedent only had two heirs, entitled to distribution, i.e., his sons. When said Probate Court adjudged that the two sons of the decedent were his only heirs, UPON THE PETITION OR CLAIM OF INTEREST *filed by the Petitioner it also adjudicated of necessity, that the Petitioner was not the heir of the decedent. Said Probate Court opinion went no further than to establish heirship, and its judgment is res adjudicata not as to the proposition as set forth by the United States Court of Appeals, but to the contrary that Petitioner was not an heir* BUT A STRANGER TO THE ESTATE. Said conclusion consistent with the position taken by the Petitioner in the case at bar and instead of barring her claim, fortifies the same.

The concluding portion of the opinion of said State Probate Court in the form of an omnibus denial that the "petition of Helene Marceau Sidebotham be and the same is hereby denied" in and of itself added nothing to the actual opinion of the State Probate Court in the paragraph which preceded the same.

Thus, in the case of *Becket v. Selover*, 7 Cal. 215, it was stated that probate sales and proceedings were void, because the Court had no jurisdiction to grant letters on the estate of a living person. The fact that the petitioner mistakenly alleged that a living person was dead, could not confer jurisdiction. In the case at bar the defect of jurisdiction appeared on the face of appellant's petition before the said State Probate Court and it affirmatively appeared that she was not in privity with said estate.

Conclusion.

In conclusion, petition for writ of certiorari should be granted because the federal court below cannot read into a state probate court judgment, attributes of powers and jurisdiction which are specifically denied said court by State law, and by said contrivance conclude that petitioner's property rights as a stranger to the estate of the decedent were thereby determined, and that said state court judgment is now *res adjudicata* on the merits, in violation of the Fifth Amendment to the Constitution of the United States, since it is not within the power of a federal appellate tribunal to redetermine a State Court adjudication, which upon its face obviously is not adverse to Petitioner, and thereby deprive petitioner of property rights, without due process of law.

Respectfully submitted,

MANUEL RUIZ, JR.,

Attorney for Petitioner.

APPENDIX "A".

Statutory Provisions Cited and Quoted.

DETERMINATION OF HEIRSHIP.

1080. Procedure: Petition, etc. When the time to file or present claims against the estate has expired, and a petition for final distribution has not been filed, the executor or administrator, or any person claiming to be an heir of the decedent or entitled to distribution of the estate or any part thereof may file a petition setting forth his claim or reason and praying that the court determine who are entitled to distribution of the estate. The clerk shall set the petition for hearing by the court and give notice thereof for the period and in the manner required by Section 1200 of this code. At least 10 days before the date set for the hearing of such petition by the court, the petitioner shall cause notice of the hearing thereof to be mailed to the executor or administrator and to all legatees and devisees and to all known heirs of the decedent, and to all persons (or their attorneys, if they have appeared by attorney) who have requested notice as provided in Section 1202 of this code, or who have given notice of appearance in person or by attorney, addressed to them at their respective post-office addresses given in their requests for special notice or notice of appearance, if any, otherwise at their respective offices or places of residence, if known, and if not, at the county seat of the county where the proceedings are pending, or to be personally served upon such persons. Any person may appear and file a written statement setting forth his interest in the estate. No other pleadings are necessary and the allegations of each claimant shall be deemed to be denied by each of the other claimants to the extent that they conflict with any claim of the latter.

INTERPRETATION OF WILLS.

108. Disposition to heirs, etc.: Words of Donation. A testamentary disposition to "heirs," "relations," "nearest relations," "representatives," "legal representatives," "personal representatives," "family," "nearest (or next) of kin" of any person, without other words of qualification, and when the terms are used as words of donation, and not of limitation, vests the property in those who would be entitled to succeed to the property of such person, according to the provisions of Division II of this code. Such terms are used as words of donation, and not of limitation when the property is given to the person so designated, directly and not as a qualification of an estate given to the ancestor of such person.

1000. Petition and Notice of Hearing. When four months have elapsed after the first publication of notice to creditors and upon bond . . . the executor or administrator, or any heir, devisee or legatee, or the assignee, grantee or successor in interest of any heir, devisee or legatee, may petition the court for distribution of a legacy, devise or share of the estate or any portion or portions thereof to which he is entitled or a payment on account of the legacies to the heirs, devisees or legatees or any assignees, grantees or successors in interest or where there are priorities, to those of the class or classes having priorities . . .

Amendments to the United States Constitution.

Amendment V.

Criminal Proceedings and Condemnation of Property.

(Section 1). No person shall be held to answer for a capital, or otherwise infamous crime, unless . . .; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

APPENDIX B.

Opinion Below [Tr. p. 266].

United States Court of Appeals for the Ninth Circuit.

Before Healy, Pope, and Lemmon, Circuit Judges.

Lemmon, Circuit Judge.

"Because there must be an end to litigation, the legal principle of res judicata is a salutary one and should be freely applied," says the successful litigant.

"Yes, but—", replies his adversary, "yes, but *our* case is different. As to *us*, *res judicata* should not be invoked because," etc., etc.

Debates of this type have been going on for centuries. In a towering milestone in the law of *res judicata*, a California jurist who attained a place on the United States Supreme Court, gave a masterly elucidation of the principle. We refer to Mr. Justice Field's opinion in Cromwell v. County of Sac, 1877, 94 U. S. 351, 352-353, which is to be quoted from hereinafter.

1. *Statement of the Case*

This is the second appeal in the instant case. With the exception of two crucial pleadings and a crucial prior decree, the relevant record in this case will not be summarized herein, since it is amply stated in our first opinion, published *sub nom.*, Sidebotham v. Robison, 9 Cir. 1954, 216 F. 2d 816. The three vital documents will be fully summarized hereinafter.

2. *The Appellee's Statement of "Claim of Interest" in the Estate of Sidebotham Filed in San Francisco On December 4, 1952.*

In the Superior Court of the State of California, for the City and County of San Francisco, on December 4,

1952, the present appellee filed what she captioned a "State [sic] of Claim of Interest in Estate Pursuant to Probate Code 1080" "In the Matter of the Estate of Robert Russell Sidebotham, Deceased." The document, signed by the appellee's attorney on this appeal, contained the following material allegations:

The statement set forth the appellee's "interest in the estate" of Sidebotham, who died intestate during the month of December, 1951. Phil C. Katz was appointed administrator of the estate.

The only heirs of the decedent, other than the petitioner, are Robert Sidebotham and James Sidebotham [the present appellants], by a former marriage of the decedent.

The estate consists of community property only, as well as increase thereof, all of which constitutes property of petitioner (appellee), by virtue of the following facts:

a. Appellee and decedent were married in Tijuana, Lower California, Mexico, on May 30, 1928, and were husband and wife up to and including November 14, 1946, on which latter date "said marriage was dissolved by a Court of competent jurisdiction."

b. The matrimonial domicile of the appellee and the decedent was at all times the State of California.

c. During the marriage the decedent accumulated real and personal property, consisting of more than $75,000 in cash, on deposit in banks in California; and real estate and other properties.

The appellee's petition concluded with the following paragraphs:

> "That said *community* property, has never been partitioned either by agreement of petition [sic] and decedent, judicial decision, or otherwise; and upon the

death of decedent, petitioner became entitled to receive one-half thereof by survivorship, and detain the other half thereof, which she at all times has owned from the moment of its acquisition during the marriage.

"WHEREFORE, petitioner prays that the Court determine that she is entitled to said property of said estate above set forth and that a judgment and decree of the Court be made accordingly." [Emphasis supplied.] [Deft. Ex. A.]

It is agreed that the above petition was filed in "the probate jurisdiction of the Superior Court," "the probate division of the Superior Court," or "the superior court acting in the exercise of its probate jurisdiction," as it is variously phrased. See Schlyen v. Schlyen, 1954, 43 C. 2d 361, 372.

3. *The "Decree Establishing Heirship"*

On December 10, 1953, a Judge of the Superior Court in San Francisco signed a "Decree Establishing Heirship." The decree recited that the petition of Robert E. Sidebotham and James J. Sidebotham, praying that the court determine who were entitled to distribution of the estate of Robert Russell Sidebotham, deceased, had come up for hearing; that satisfactory proof of notice had been given; that the two above-mentioned petitioners had appeared by their attorney and had filed their written statement setting forth their respective claims of interest in the estate, "and that Helene Marceau Sidebotham also appeared by her petition filed herein on the 4th day of December, 1952; and that the Court proceeded to hear "the petitions of both Robert E. Sidebotham and James J. Sidebotham and of Helene Marceau Sidebotham."

After a hearing of the evidence and the arguments of counsel, it was—

". . . ORDERED, ADJUDGED AND DECREED by the court that Robert Russell Sidebotham, alias, died intestate on the 21st day of December, 1951, leaving surviving as his only heirs at law *and the only persons entitled to distribution of said estate Robert E. Sidebotham and James J. Sidebotham, the sons of said decedent;* that thereupon the estate of said decedent descended to his said heirs at law *and is now vested in them,* subject to administration, share and share alike, *and each of said persons is entitled to distribution of one-half of said estate* when said estate shall be in a condition to be closed.

"IT IS FURTHER ORDERED, ADJUDGED AND DECREED *that the petition of Helene Marceau Sidebotham be and the same is hereby denied."* [Emphasis supplied.]

Our earlier opinion in this case was handed down on October 18, 1954. Neither of the above exhibits was mentioned in that opinion, of course, since they first came into the case when they were put into evidence in the Court below at the trial on the facts, which was held on October 24, 1955.

4. *The Third Amended Complaint in the Instant Case*

The third—and last—amended complaint in this case was entitled an action to "Quiet Title Accounting and Injunction." It incorporated "paragraphs I to VII, inclusive, of her first cause of action, as contained in her second amended complaint to quiet title, accounting and injunction," and "paragraphs I and II of her second cause of action" in the same second amended complaint. Those two

causes of action are thus summarized in our first opinion, 216 F. 2d at page 821:

> "In her seconded amended complaint, appellant alleged in the first cause of action that on the death of Robert Sidebotham on December 21, 1951, she and he were tenants in common of certain real and personal property, each being the owner of an undivided one-half of the property, that the administrator has repudiated the co-tenancy and refused to her the right of possession and beneficial enjoyment of her share as well as the right to an accounting as to the rents and profits pertaining to the property. She stated the capacity of Katz as Administrator of the Estate and the defendants Robert Sidebotham and James Sidebotham as claiming the Estate as the heirs at law.
>
> "In the second cause of action which incorporated the allegations of the first, she averred that she was, at the times mentioned, the owner and entitled to the possession of an undivided 50% of the assets, property, both real and personal, as well as the fruits and increase thereof, which the decedent possessed at the time of his demise."

In addition to the above two causes of action, transplanted as two separate causes of action from the second into the third amended complaint, the third amended complaint contains a third cause of action. Although that third cause of action is fully summarized in our first opinion, for the convenience of the reader we give a summary here, as follows:

Since the death of Robert Sidebotham, on December 21, 1951, the appellee, as an aggrieved party, has discovered the following facts constituting fraud against her,

which fraud proximately caused her to "suffer a grievous mistake, from which she desires relief."

The appellee was married to Robert Sidebotham on January 1, 1927, and was divorced from him on November 14, 1946, in Nevada, by substituted service.

During 1938, when Sidebotham was sentenced to jail for failure to report a real estate subdividing scheme to the State Real Estate Commission, he borrowed $100 from the appellee, and told her that as soon as he made some money he would pay her back. He frequently saw the appellee until the middle of 1940, always informed her that he was "broke," but occasionally would give her rent and food money, never paid her back the $100, and never informed her that "he had made any money."

At the time of his death, "certain assets were found in his possession, under the following aliases . . . . and several combinations of the name of Sidebotham." Those assets passed from the decedent's control to Phil C. Katz, as his personal representative, "and to the present successor of said representative, towit: [the appellant Robison]."

That one of the reasons of the decedent "in so hiding his assets was to prevent [the appellee] from sharing in acquests and gains during her marriage to him," etc.

In 1941 the "decedent refused to further cohabit with plaintiff," etc., "and she did not know his whereabouts." In November, 1946, the appellee procured a divorce from him on substituted service.

"When questioned by her attorney, whether there was any community property, she answered that she did not know. That said attorney, unbeknownst to [appellee], nevertheless framed a formal pleading, wherein it was

stated that there was no community property. That plaintiff did not read the same but at the hearing of the action, wherein a divorce was granted to [appellee], she did not testify concerning the existence or non-existence of property of the marriage."

The Nevada court did not dispose of the property rights of the parties, etc., and there was no evidence submitted to the Court concerning property, but the court nevertheless found that the allegations of the complaint were true and sustained by the evidence. ". . . the finding aforesaid was arbitrary and capricious, and the Court lacked the power . . . accordingly to make the same, since there was no evidence submitted on the subject whatsoever."

The appellee seeks relief from her mistake and the estoppel that would otherwise apply, but for said mistake, "in that an adjudication that there was no community property, under the facts hereinabove set forth, would result in great and irreparable damage, etc. . . . the presumption of law . . . that Robert Sidebotham admitted all of the facts which were pleaded in the Nevada Judgment, by reason of lack of personal service upon him, is a fiction which this Court of Equity ought to weigh against the misconduct of Robert Sidebotham in having actively concealed assets," etc., to which the appellee had an equal and vested interest with him. . . . [the appellee] first discovered that she had signed the formal pleading containing the sentence that there was no community property, . . . after the institution of this case at bar, when her attorney, Manuel Ruiz, Jr., informed her of the same, on July 13, 1953, said attorney having been on the same day so advised by the attorneys for the defendants [appellants herein]."

The prayer asked for a "writ of mandamus or mandatory injunction, or other proper order" "requiring [ap-

pellants] . . . to account for all monies, [etc.] in their possession, held for . . . the account of the Estate of Robert Sidebotham, etc., . . . and that they . . . be restrained from paying out further funds, etc., to third parties."

The prayer also asked for an accounting and for a decree declaring that the appellants "have no interest" in the assets in question, "and the assets accounted for to the extent of an undivided one-half thereof."

The appellee also asked that she be relieved "from any estoppel or mistake proximately resulting from the fraudulent conduct of concealment of said Robert Sidebotham concerning her property rights."

Finally, the prayer requested "That it be decreed that [*appellee*] *is the owner and entitled to the possession of an undivided half of the assets, etc., constituting the Estate of Robert Sidebotham, deceased.*" [Emphasis supplied.]

On February 23, 1955, the appellee amended her Third Amended Complaint by alleging that she was married to Sidebotham in Tijuana, Lower California, Mexico, on May 30, 1928. In her original Third Amended Complaint, it will be remembered, she had alleged that she was married to him on January 1, 1927.

5. *The "Decree Establishing Heirship" Is Res Judicata in the Instant Case.*

We have fully summarized the "Decree Establishing Heirship," rendered by the Superior Court of the City and County of San Francisco. We have also given ample synopses of the appellee's statement of "Claim of Interest" filed in that Court, and of her Third Amended Complaint in its First Amendment filed in the Court below.

We have seen that in her San Francisco claim of 1952 the appellee asserted that she was entitled to retain the other half-interest "which she at all times has owned from the moment of its acquisition during the marriage."

In her present suit, she avers that her deceased ex-husband hid his assets so as to prevent her from "sharing in acquests and gains during her marriage to him"; that when questioned by her attorney in the Nevada divorce suit as to whether there was any community property, "she answered that she did not know"; and that she "seeks relief from her mistake," "in that an adjudication that there was no community property, under the facts hereinabove set forth, would result in great and irreparable damage," etc. She asks that she be decreed the owner "of an undivided half of the assets" of the estate.

But the San Francisco decree filed on December 14, 1953, and signed by the Judge of the Superior Court four days previously, denied her petition *in toto*, in which she claimed all of the community estate, half as owner "from the moment of its acquisition during the marriage" and the other half "by survivorship."

Since her 1952 petition, in which she claimed *all* of the community estate was *wholly* denied, she cannot now relitigate a claim for *one-half* or any other part thereof. Just as she originally could not have sued piecemeal for her alleged share of the Sidebotham estate, so can she not sue *now* for a piece of it, her former total claim having been already judicially denied.

In Cromwell v. County of Sac, *supra*, 94 U. S. at pages 352-353 Mr. Justice Field said:

> "In considering the operation of this judgment, it should be borne in mind, as stated by counsel, that there is a difference between the effect of a judgment

as a bar or estoppel against the prosecution of a second action upon the same claim or demand, and its effect as an estoppel in another action between the same parties upon a different claim or cause of action. In the former case, the judgment, if rendered upon the merits, constitutes an absolute bar to a subsequent action. It is a finality as to the claim or demand in controversy, concluding parties and those in privity with them, *"not only as to every matter which was offered and received to sustain or defeat the claim or demand, but as to any other admissible matter which might have been offered for that purpose. Thus, for example: a judgment rendered upon a promissory note is conclusive as to the validity of the instrument and the amount due upon it, although it be subsequently alleged that perfect defenses actually existed, of which no proof was offered, such as forgery, want of consideration or payment.* If such defenses were not presented in the action, and established by competent evidence, the subsequent allegation of their existence is of no legal consequence. The judgment is as conclusive, so far as future proceedings at law are concerned, as though the defenses never existed. *The language, therefore, which is so often used, that a judgment estops not only as to every ground of recovery or defense actually presented in the action, but also as to every ground which might have been presented, is strictly accurate, when applied to the demand or claim in controversy. Such demand or claim, having passed into judgment, cannot again be brought into litigation between the parties in proceedings at law, upon any ground whatever."* [Emphasis supplied.]

If it be argued that the "Decree Establishing Heirship" purported to adjudicate the rights only of Robert E. Sidebotham, James J. Sidebotham, and Helene Marceau Sidebotham in the estate of Robert Russell Sidebotham, while in the present suit, W. A. Robison, the administrator of the decedent's estate, has been made a party defendant, there is an answer both simple and conclusive.

The administrator is not a necessary party to the instant suit, and therefore his presence in the case cannot defeat the application of the doctrine of *res judicata*.

In Sullivan v. Curry, DC Ariz., 1930, 40 F. 2d 948, 950, appeal dismissed, 9 Cir., 1930, 44 F. 2d 1020, the Court said:

> "In the case of Stewart v. Smith, 6 Cal. App. 152, 91 Pac. 667, 669, which is similar to the case at bar, and in which an executor was joined as a party defendant, the Supreme Court of California held: 'The executor is not a necessary party to the action. All the devisees, legatees, and persons claiming an interest in the estate are made parties plaintiff and defendant, and, as the executor has no interest in the distribution of the estate, he is properly excluded from a contest over the right of distribution of the whole or a part of it'—citing [many cases]."

And in Sunshine Coal Co. v. Adkins, 1940, 310 U. S. 381, 402, not cited by counsel, the Court said:

> "Where the issues in separate suits are the same, the fact that the parties are not precisely identical is not necessarily fatal. As stated in Chicago R. I. & P. Ry. Co. v. Schendel, 270 U. S. 611, 620, 'Identity of parties is not a mere matter of form, but of substance. Parties nominally the same may be, in legal effect, different, . . . and parties nominally dif-

ferent may be, in legal effect, the same.' A judgment is *res judicata* in a second action upon the same claim between the same parties or those in privity with them [citing Cromwell v. County of Sac, *supra.*]"[1]

The principle of *res judicata* has been repeatedly applied to probate and other matters by the Supreme Court of California.

In the leading case of Crew v. Pratt, 1897, 119 C. 139, 148, 149, the Court said:

"Law-writers and courts, in treating of jurisdiction, have usually contented themselves with saying that, where courts have jurisdiction of the person and of the subject matter of the controversy, their judgments, if erroneous, are voidable, but not void. That is to say, they are open to direct attack as upon appeal, but not to collateral attack.

"In thus defining jurisdiction of the subject matter, it must be understood that the power to pronounce the resulting judgment constitutes a part of the subject matter over which the jurisdiction extends.

* * *

"It may be stated, as a general proposition, that a judgment is conclusive, not only as to the subject matter in controversy in the action upon which it is based, but also in all other actions involving the same question, and upon all matters involved in the issues which might have been litigated and decided in the case; the presumption being that all such issues were really met and decided. [Authorities cited.]

---

[1]See also United States v. Des Moines Valley R. Co., 8 Cir., 1897, 84 F. 40, 44-45.

"In Auguisola v. Arnaz, 51 Cal. 435, it was said *probate courts have exclusive jurisdiction of the final distribution of the estates of decedents.*

"And such decree of distribution of an estate, after due notice by the probate court, is conclusive upon a person who might have claimed that a share of the estate belonged to him." [Cases cited.] [Emphasis supplied.][2]

6. *The California Probate Court Had Jurisdiction to Try the Appellee's Title to Property of the Estate.*

The appellee asserts that the Probate Court was "without jurisdiction to try title to property as between a representative of the estate and a stranger thereto."

The rule relied upon by the appellee is well settled in California,[3] but simply is not applicable to the case at bar. A woman who claims an "interest in the estate," who refers to herself as one of the "heirs," and who alleges that she is "entitled to receive one-half" of the estate, which "consists of community property only," "by survivorship," and to "retain" the other one-half as the community spouse, can hardly be said to be claiming as a "stranger to the estate." When we consider *jurisdiction*, we are not concerned with the *justice* of the petition, but with its *claims*.

Under California law, "upon the death of either spouse, one-half of the community property belongs to the sur-

---

[2]See also Reynolds v. Churchill Company, 1921, 187 C. 543, 546-547; Sacramento, etc., Drainage District v. Superior Court, 1925, 196 C. 414, 430; Kupfer v. Brawner, 1942, 19 C. 2d 562, 564; Estate of Loring, 1946, 29 C. 2d 423, 427-428; 21 Cal. Jur. 2d §861, page 244.

[3]See Estate of Dabney, 1951, 37 C. 2d 672, 676-677; Schlyen v. Schlyen, *supra*, 43 C. 2d at page 372; but *cf.* Estate of Riccomi, 185 C. 458, 463-464.

vivor and the other half is subject to the testamentary disposition of the decedent. In the absence thereof it goes to the survivor, subject to certain provisions relating to administration of estates, including control and disposition of community property by the husband upon the death of the wife, . . ." 10 Cal. Jur. 2d, §62, page 737.

A commentator in The Stanford Law Review of April, 1952, Volume 4, Number 3, page 443, in discussing "the wife's interest in the community property prior to the husband's death," observed:

> "Of even greater persuasiveness is the fact that the California legislature has regarded the wife as having such an interest in community property that the entire estate should not be subjected to the California inheritance tax."[4]

Assuredly, this is not language applicable to "a stranger to the estate"!

7. "Allowance of Expenses of Defense"

A supplemental transcript of record and an "Opening Brief of Appellants" have been filed on the "Allowance of Expenses of Defense." In the latter, the appellant Robison asks that he "be awarded all his necessary expenses incurred to defend any assets in his possession," etc.

Robison concedes, however, that "If the judgment is reversed and defendant W. A. Robison as said administrator wins a final judgment in the federal District Court no problem as to the awarding of expenses of defense will ever arise in that Court or in this Court because they will be awarded out of the probate assets being adminis-

---

[4]See also California's Probate Code §§201, 201.5, and 202; and California's Revenue and Taxation Code, §13551.

tered by the San Francisco Probate Court." In view of the appellant's concession and in view of the fact that we are deciding his appeal in his favor, there is no need for us to pass upon the question raised by the appellant.

8. *Conclusion*

We hold that the Probate side of the Superior Court of the City and County of San Francisco had jurisdiction to try the appellee's title to the property in her former husband's estate, and the "Decree" of that Court "Establishing Heirship" is *res judicata* in the instant case.

Accordingly, the judgment of the Court below, undertaking to find in favor of the appellee on an issue that had already been adjudicated by the State court—namely, the appellee's rights in Robert Sidebotham's estate— is

Reversed.

(Endorsed:) Opinion. Filed Apr. 2, 1957.

Paul P. O'Brien, Clerk.

APPENDIX "C".

Conflicting Opinion.

EXTRACT FROM MEMORANDUM OPINION [Tr. p. 39].

(4) The Effect of the Decree Under Section 1080 of the Probate Code.

The defendants contend, in effect, that plaintiff's claim has already been adjudicated because she filed a petition for determination of heirship in the Probate Court, and allowed a default to be taken against her.

The record indicates that plaintiff was not sure of the state court's jurisdiction, and that she filed two matters at about the same time. One of the matters was in the Probate Court, and the other was the action now before this court.

The plaintiff contends that after she filed in the Probate Court, she withdrew because of the fact that she was not in privity with the estate, and accordingly said court was wtihout jurisdiction of the subject matter of her claim. In the instant case the plaintiff was not decedent's widow, and at the time of his death was a stranger to the estate. The law of California states that the Probate Court has no jurisdiction to determine adverse claims to the properties of an estate in course of administration before it when asserted by a stranger to said estate. Estate of King (1926), 199 Cal. 113. The court's holding in the case of Schylen v. Schylen, 43 Cal. 2d 361, has not changed this general rule. That case decided that matters which the State Superior Court acting in the exercise of its probate jurisdiction may try, can nevertheless be tried in the Superior Court by virtue of its general jurisdiction, by waiver of the parties, but that matters which must be tried in the Superior Court in its general jurisdiction, such

as claims of title between the estate and strangers cannot be tried in the Probate Court since the Probate Court is without jurisdiction.

Quoting from page 373 of said opinion:

"It is certainly true that the court in a probate proceeding is concerned with the settlement of the estate and not with controversies between the estate and strangers, the adjudication of which is the function of the court in the exercise of its general jurisdiction."

The Probate Court did not have jurisdiction to hear plaintiff's claim and therefore she is not precluded from proceeding herein.

FINDINGS OF FACT AND CONCLUSIONS OF LAW [Tr. p. 42].

The above-entitled action having been heard by the Court without a jury and evidence, both oral and documentary having been presented and the matter duly submitted, the Court now makes the following findings:

Findings of Fact

1. That Robert Sidebotham died intestate on December 21, 1951. At the time of his death he was in possession and control of the property specified in Inventory and Appraisal filed in probate proceedings, case No. 123669, California Superior Court, City and County of San Francisco, in re: Estate of Robert Sidebotham, deceased, inclusive of the following, to wit: Contents of Safety Deposit Box, at the American Trust Company, in San Francisco, containing the sum of $64,770.00; postal certificate No. 9095, $2,500.00; twenty 25-cent War Savings Stamps, $5.00; stock sold prior to death, $400.00; Bank of America (Day & Night), $1,867.00; Bank of America (6th

and Olive), $1,120.79; Bank of America (Arguello and Geary), $2,524.75; Merrill Lynch, Pierce, Fenner & Beane, brokerage account, $792.10; Pacific National Bank, $525.79; U. S. Postal Savings, $560.12; Anglo-California National Bank, $433.24; Eureka Federal Savings and Loan Association, $4,217.56; 1949 Lincoln Sedan, Engine No. 13 A7094, $1,420.00; Real Estate in the City and County of San Francisco, described: Beginning at a point on the N. line of Geary Blvd., distant thereon 100 feet westerly from the westerly line of 14th Avenue; running thence westerly along the northerly line of Geary Blvd. 27 feet, 6 inches, thence at a right angle easterly 27 feet, 6 inches; and thence at a right angle southerly 100 feet to the point of the beginning, being a portion of block 1446, lot number 25, improved, $30,000.00; six shares of the capital stock of El Vado Corporation, Nevada corporation, Certificate No. 19, dated July 5, 1935. Two Thousand shares of the capital stock of Inter-Provincial Oils, Ltd., Dominion of Canada, Certificate No. 5766, dated July 21, 1931. Five Hundred shares of the capital stock of Crescent City Properties Company, Nevada corporation, Certificate No. 14, dated April 23, 1928, 250 shares, and Number 15, dated April 23, 1928, 250 shares. That said property was held, kept and controlled by him, under various and sundry names and aliases.

2. That said property, upon the death of Robert Sidebotham, passed from the control, possession and management of said decedent, to Phil C. Katz, as his personal representative, and to the present successor of said representative, to wit: W. L. Robison, the duly qualified and acting administrator of the Estate of Robert Sidebotham, Deceased, being one of the defendants in the action.

3. That the plaintiff, Helen Marceau Sidebotham, and said decedent, Robert Sidebotham, were married in the

City of Tijuana, Lower California, Mexico, on May 30, 1928, and remained husband and wife until she divorced Robert Sidebotham on November 14, 1946, in the State of Nevada, by substituted service. That although said judgment of divorce found the allegations of the complaint to be true, one of which allegations was that there was no community property, plaintiff was not aware that the same was in her complaint, she was not questioned at the trial about any community property, and the decree made no adjudication of property rights. That the plaintiff first discovered that her complaint in the Nevada action made reference to the fact that there was no community property on or about July 13, 1953. That the property involved in the case at bar was located outside of the State of Nevada, and the jurisdiction of that State Court.

4. That the decedent at all times concealed from the plaintiff the fact that he had accumulated property during the marriage, which belonged to the community. She was at all times ignorant concerning the extent thereof, nor was she put on inquiry concerning any circumstances known to her, nor did she until after the death of Robert Sidebotham, on December 12, 1951, discover facts constituting the existence of said property and of the said fraud against her.

5. That said property, excepting the sum of $10,015.06, was acquired prior to November 14, 1946, by the decedent, and all of his estate was acquired or accumulated during the marriage relationship of the parties, inclusive of the period of time between the years 1935 and 1946, during which time the decedent was busy in negotiating deals pertaining to real estate transactions and oil royalties, in which he had an interest, and which numbered approximately seventy in number. That on November 14,

1946, by virtue of the divorce between the parties, plaintiff and said decedent became, and ever since have been, tenants in common of said property, save and except said sum of $10,105.06 thereof.

6. That the decedent procured a judgment of divorce against plaintiff in the State of Wyoming on October 2, 1940. That said judgment was upon substituted service. That when the decedent procured said divorce in Wyoming, he stated upon his oath, that the residence of the plaintiff was "unknown and cannot, with reasonable diligence be ascertained." That said decedent did in fact know where the plaintiff resided, prior thereto in the year 1940, in the City of San Francisco, where he visited her, cohabited with her, and paid her rent in said year 1940. That said judgment did not purport to dispose of any property rights. That it is subject to collateral attack, in that it was obtained by false statements in the affidavit made by decedent to obtain the order of publication of summons. That said decree was void. That in 1940 the matrimonial domicile of the parties was the State of California. That plaintiff was a resident of California, did not participate in the Wyoming proceedings, nor did she make a personal appearance therein.

7. That at the time of decedent's death, the plaintiff was not decedent's widow, but she was a stranger to the estate. That she filed a claim to the property rights asserted herein under Section 1880 of the Probate Code of the State of California in the Estate Probate proceedings in the Superior Court of the State of California, in San Francisco, but did not pursue the claim further and allowed a default to be taken against her. She did so because of the fact that she was not in privity with the estate, and on the basis that the said probate court had no jurisdiction

of the subject matter of her claim. It is found that the probate court aforesaid had no jurisdiction.

8. The defendants, Robert Sidebotham and James Sidebotham, are sons of decedent, by a prior marriage, and are entitled to take as heirs at law, and as their rights may be determined under the laws of succession of the State of California, as to the property left by decedent, not otherwise disposed of in favor of the plaintiff by this judgment.

Conclusions of Law.

1. That all of the monies, assets, and properties possessed and controlled by the decedent at the time of his death on December 21, 1951, and held for and on account of the Estate of Robert Sidebotham, deceased, excepting the sum of $10,015.06 thereof, were acquired and accumulated by said decedent, prior to November 14, 1946.

2. That plaintiff has at all times since November 14, 1946, been the owner and entitled to the possession of an undivided one-half thereof as tenant in common.

3. Defendants are ordered to account to the plaintiff for all such monies, assets and properties held for and to the account of the Estate of Robert Sidebotham, Deceased.

Let Judgment Be Entered Accordingly in Favor of the Plaintiff and Against Defendants, and Each of Them; Each of the Parties to Bear His or Its Own Costs Incurred Herein.

Dated: January 27th, 1956.

/s/ MICHAEL J. ROCHE,
Judge of the United States District Court.

JUDGMENT [Tr. p. 48].

In the United States District Court for the Northern District of California, Southern Division.

Helen Marceau Sidebotham, Plaintiff, vs. W. A. Robison, Administrator of the Estate of Robert Sidebotham, Deceased, *et al.*, Defendants. No. 32531.

This cause came on regularly for trial before the Court sitting without a jury, and the Court having heard the testimony and having examined the proofs offered by the respective parties, and the Court being fully advised in the premises, and having filed herein its findings of fact and conclusions of law, and having directed that judgment be entered in accordance therewith:

It Is Hereby Ordered, Adjudged and Decreed, that the plaintiff have and recover judgment against the defendants' W. A. Robison, as Administrator of the Estate of Robert Sidebotham, deceased; and James Sidebotham and Robert Sidebotham.

The defendant, W. A. Robison, as Administrator of the Estate of Robert Sidebotham, deceased; and James Sidebotham and Robert Sidebotham, are hereby ordered to account to plaintiff Helen Marceau Sidebotham, for all monies, assets, and properties, which have been held for and to the account of the Estate of Robert Sidebotham, deceased.

It is further ordered that defendant W. A. Robison, as Administrator of the Estate of Robert Sidebotham, deceased, pay out of the funds of said estate, in due course of administration, to plaintiff Helen Marceau Sidebotham,

an undivided one-half of all the monies, assets, and properties, possessed and controlled by the decedent, at the time of his death on December 21, 1951, after first deducting therefrom, the sum of Ten Thousand Fifteen Dollars and Six ($10,015.06) Cents.

Each of the parties shall bear his or its own costs.

Dated January 27, 1956.

/s/ MICHAEL J. ROCHE,
Judge of the United States District Court.